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IN THE

Supreme Court of the United States

October Term, 1967

No. 585

PAUL H. SCHWEITZER AND
FRIEDEL SCHWEITZER,

Petitioners,

against

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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"[s]uch an issue of necessity requires a practical approach, all pertinent *facts* and circumstances being open to inspection and consideration regardless of their objective or subjective nature." (Emphasis added) 6

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above entitled matter on the 14th day of April, 1967.

Opinion Below

The opinion of the United States Court of Appeals for the Third Circuit is reported at 376 F(2d) 30 (Appendix B, 1b).

The memorandum of findings of fact and opinion of the Tax Court of the United States is reported at T.C. Memo. 1965-308 (R. 47).*

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* References designated "R" are to the record prepared for the Court of Appeals.

Statement of Jurisdiction

The judgment of the Court of Appeals was made and entered on April 14, 1967 (Appendix B, 3b).

There was no motion or order respecting a rehearing. There was a motion and Order granting an extension of time within which to petition for certiorari, to and including September 10, 1967.

The jurisdiction of this Court is conferred by Sec. 7482(a) of the Internal Revenue Code of 1954, and 28 U.S.C. Sec. 1254(1).

The jurisdiction of the Court of Appeals is found in the Internal Revenue Code of 1954 Sec. 7482(a), and 28 U.S.C. Sec. 1254(1).

The jurisdiction of the Tax Court of the United States is found in the Internal Revenue Code of 1954, Sec. 7442.

Questions Presented for Review

1. Did the Court of Appeals err in declining to find that there existed a claim for reimbursement for petitioner's nationalized properties in the year of their nationalization?

2. Did the Court of Appeals err in declining to find that by adjudication of that claim it was ascertained with reasonable certainty that such reimbursement will be received?

3. Did the Court of Appeals err in declining to find that the said adjudication did qualify the said reimbursement as one with respect to which there was a reasonable prospect of recovery in the year of nationalization?

4. Did the Court of Appeals err by deciding that petitioner Paul H. Schweitzer had to deduct the loss arising

out of the nationalization of his assets in the year of nationalization, instead of in the year his claim for reimbursement had been adjudicated?

5. Where Section 1.165-1(d)(2)(i)[1] of the Income Tax Regulations leaves no doubt that the loss from Communist nationalization is tax deductible, either in the year of nationalization or in the year of adjudication, did the Court of Appeals err by affirming the Tax Court in disallowing said deduction in the year of adjudication, whereas the cited Section disallows it in the year of nationalization?

6. Did the Court of Appeals err in adopting the findings of the Tax Court patterned from *Elek*, 30 T.C. 731, that

> "The attitude of the present Hungarian Government toward its own nationals offers little reason to hope that compensation will be forthcoming from it,"

although Elek was a Hungarian citizen at the time of nationalization, and petitioner Paul H. Schweitzer an American citizen?

7. Did the Court of Appeals err in calling "sufficient evidence" the reasoning of the Tax Court that the nationalization of *Elek*'s assets and of Paul H. Schweitzer's assets having been accomplished under the same Hungarian Decree No. 4 of 1952, their losses must have been sustained in 1952 (R. 50)[2] although *Elek* was a Hungarian national, and Paul H. Schweitzer an American national?

8. Did the Court of Appeals err in calling "sufficient evidence" the enunciation at the last page of the opinion of the Tax Court (R. 58):

> "that petitioner did file a claim with the Foreign Claims Settlement Commission under the amended Act of August 9, 1955, for recovery of his *war* losses *which* were *incurred in 1949 and 1952* and was awarded and paid $1,069.42 *has nothing to do with*

[1] Appendix A, 1a.

> *the issue* which we have here to decide—it is irrelevant to the determination *when the losses were incurred,*" (emphasis added),

which contradicts itself?

9. Did the Court of Appeals err by failing to note that the respondent rather off-handed conceded the implication in item 2 on page 4 of Senate Report No. 800, 81st Congress, 1st Session, dated July 28, 1949, that

> "[t]he Committee Report (i.e., the *Senate Report of July 28, 1949*) does state that it remained to await the report and recommendation of the War Claims Commission regarding nationalization claims against countries such as Hungary, * * * " (R. 44).

Statutes Involved

The petition to the Tax Court charged the respondent with an error concerning Section 165(a) of the Internal Revenue Code of 1954, and Sections 1.165-1(d)(2)(i) and 1.165-1(d)(4) of the Regulations under the Internal Revenue Code of 1954.

However, the issues raised involve these additional statutory provisions:

> Sec. 7482(a) of the Internal Revenue Code of 1954;
>
> Secs. 202(a), 202(b), 302, 303 of the International Claims Settlement Act of 1949 as amended.

The provisions of the statute involved are printed in Appendix A, 2a-6a.

Statement of the Case

Paul H. Schweitzer is a retired professor of engineering, a native of Hungary, who became a naturalized

American citizen in 1925; at all material times thereafter, he was an American citizen and resident (R. 49).

Petitioner owned shares of stock, interests in two partnerships, and in real property, all located in Budapest, Hunrary (R. 49, 50). No deductions for war losses were ever claimed by the petitioners under Section 127 of the 1939 Code (R. 52). Upon termination of World War II petitioner's interests in all of said properties were recovered as of January 20, 1945 (R. 50). Neither of petitioner's said interests were alienated or abandoned (R. 53) at any time, nor was petitioner divested of his ownership rights as to any of his properties until their nationalization (R. 53).

The corporation and the two partnerships were nationalized in 1949 (R. 49), and the real property in 1952 (R. 50), all without compensation, pursuant to Decrees Nos. 20 and 4 of the Presidium of the Hungarian People's Republic, issued December 28, 1949 and February 17, 1952 respectively (R. 49, 50). Petitioner filed a claim under the International Claims Settlement Act, in July, 1957, with respect to his nationalized properties (R. 51). On April 13, 1959, the Foreign Claims Settlement Commission of the United States issued a proposed decision, which became final shortly thereafter in 1959 (R. 51), and in the same year petitioner received payments on the said decision in the total and final amount of $1,069.42 (R. 51).

All of these facts were found as facts by the Tax Court, together with the data forming the bases for determining the amount of their losses by nationalization (R. 49-53).

Petitioner was aware of his international claims and he had the intention to exercise them (R. 40, 42).

Reasons for Granting the Writ

The case involves several important and fundamental federal questions which have been decided by the Court below in a way in conflict with applicable decisions of the Supreme Court, and which has so far departed from the accepted course of judicial proceedings, and so far sanctioned such a departure by the Tax Court, as to call for an exercise of this Court's power of supervision.

All of the said conflicts and departures are described in detail below. For example, the Court below based its decision on a nonexistent fact, namely, that

> "[i]n 1955 the United States entered into an agreement for compensation of nationalized property with the Provisional Government of Hungary."

Such an agreement was never made.

The Tax Court based its opinion on a finding

> "that petitioner did file a claim with the Foreign Claims Settlement Commission under the amended Act of August 9, 1955 for recovery of his war losses which were incurred in 1949, and 1952,"

though in the said years the United States was not at war with Hungary. The respondent admitted in his brief that

> "[t] he Committee Report does state that it remained to await the report and recommendations of the War Claims Commission regarding nationalizations claims against countries such as Hungary."

The Court below did not deal with this despite petitioners' request.

In *Boehm* v. *Commissioner*, 326 U.S. 287, the Supreme Court decided that

> **"[s]uch an issue of necessity requires a practical approach, all pertinent *facts* and circumstances being open to inspection and consideration regardless of their objective or subjective nature." (Emphasis added).**

Boehm relied on *Lucas* v. *American Code Co.*, 280 U.S. 445, in which the Supreme Court said that

> "no definite legal test is provided by the statute for the determination of the year in which the loss is to be deducted. The general requirement that losses be deducted in the year in which they are sustained calls for a practical, not a legal test."

It is very significant that *Boehm* points to

> "the consequences of error and other difficulities confronting one who in good faith tries to choose the proper year in which to claim a deduction. But these difficulties are inherent under the statute *as now framed.*" (Emphasis added).

Boehm was decided on November 13, 1945, (*Lucas* on February 24, 1930).

The change of framing of the statute—as foreseen by *Boehm, supra,*—came by Treasury Decision 6445, approved January 12, 1960. Its essence is that if an originally existing claim becomes adjudicated, settled, or abandoned, in such circumstance

> "[w]hether a reasonable prospect of recovery exists with respect to a claim for reimbursement of a loss is a question of fact to be determined upon an examination of all facts and circumstances. Whether or not such reimbursement will be received may be ascertained with reasonable certainty, for example, by a settlement of the claim, by an adjudication of the claim, or by an abandonment of the claim."

In other words, these three enumerated events, adjudication, settlement, or abandonment are especially qualified by the statute as proving a prospect of recovery to be reasonable.

May petitioners add the following for the consideration of the Court:

a) Treasury Decisions are a binding construction of the Tax Law, themselves having the force and effect of the Law, unless in conflict with the statute.[2]

Lucas, supra, emphasizes that

> "[m]uch latitude for discretion is thus given to the administrative board charged with the duty of enforcing the Act. Its interpretation of the statute and the practice adopted by it should not be interfered with unless clearly unlawful."

b) What was adjudicated by the Foreign Claims Settlement Commission was

> "such a claim [which] must be continuously owned by a national of the claimant State from the time the claim arose until the date of its presentation."[3]

Thus the claim which was adjudicated was in existence at the time of the takings.

c) T.D. 6445 very carefully states in its section 1.165-1(d)(4), (Appendix A, 2a) that a taxpayer may treat any loss resulting from a casualty or other event in accordance with the rules then applicable or if he so desires in accordance with the provisions of this paragraph, *i.e.,* 1.165-1(d)(2)(i), (Appendix A, 1a).

Petitioners expressed their desire in their Federal income tax return that their losses resulting from nationalizations should be treated in accordance with the latter paragraph.

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[2] *Maryland Casualty Co.* v. *United States,* 251 U.S. 342.

[3] Conference Report 1475, July 27, 1955 to accompany H.R.6382. United States Congressional & Administrative News 1955, page 2758, Amendment No. 1, further Senate Report No. 1050, July 20, 1955 to accompany H.R.6382, *ibid.,* first paragraph of item 6 on page 2753 (R. 92).

d) The Internal Revenue Service issued Document No. 5174 (9-60).[4] It explains to the broad mass of taxpayers that

> "[s]ettlement, adjudication, or abandonment of the claim are examples of reasonable certainty as to the amount of the claim to be received." (First column of page 5.

> "If a casualty occurred * * * before January 16, 1960, and the amount of the reimbursement you will receive, if any, was not known by the end of the year of the casualty * * *, you may deduct the loss for the year the casualty occurred * * *, or you may deduct it for the year in which the reimbursement is determined, as described above; whichever you prefer." (Second column of page 5).

e) In *Patrick McGuirl, Inc.* v. *Commissioner*, 74 F(2d) 729 (2nd Cir., 1935), cert. den. 295 U.S. 748, a condemnation case, the Court decided that the excess of the award over the basis of the condemned property was taxable not in the year of vesting (1926) but in the year when the final award was paid (1929) "since the amount of the award and interest depended upon the course of future events."

f) Paragraph 1 of Article 29 of the Treaty of Peace with Hungary, entered into force on September 15, 1947[5] confers

> "the right to seize, retain, liquidate or take any other action with respect to all property rights and interests which * * * belong to Hungary or Hun-

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[4] "The purpose of the Internal Revenue Service in issuing this pamphlet is to acquaint you with your rights under the Federal tax laws and to insure that you obtain all the benefits of the deductions to which you are legally entitled as the result of your loss so that you pay no more or less than your correct tax liability." (First paragraph of page 1.) (R. 94).

[5] Thus said Treaty was already in force when petitioners' properties were nationalized on December 28, 1949 and February 17, 1952, respectively.

garian nationals and to apply such property or the proceeds thereof to such purposes as it may desire, within the limits of its claims and those of its nationals against Hungary * * *."

This was fortified by the notification to Hungary [6] that the United States desired to keep in force or revive [7] the Treaty of Arbitration between the United States of America and Hungary.[8]

Such a state of facts was enough in itself to constitute a reasonable prospect of recovery.

g) There was a note of protest to Hungary (22 Dept. of State Bull. 399 (1950)) which reads:

> "The Government of the United States informs the Government of Hungary that it holds the Government of Hungary wholly responsible for the payment of adequate and effective compensation for the property rights of American nationals affected by the present edict (i.e. the Hungarian Nationalization Law of 1949) as well as by previous law and decrees."

And

> "EFFECT ON AMERICAN INTERESTS
>
> The effect of the above-quoted note is that the United States Government has, on its own behalf and on behalf of American nationals, espoused the claims for compensation arising out of the nationalization and other seizures of property by the Hungarian Government.

---

[6] According to paragraph 1 of Article 10 of the Treaty with Hungary such notification keeps in force or revives the pre-war bilateral treaties with Hungary (R. 97).

[7] United Nations: Treaty Series, Volume 183, No. 2426 (R. 98, 99).

[8] Treaty Series No. 797; 46 Statutes at Large 2349, ratifications exchanged July 24, 1929, proclaimed July 24, 1929 (R. 95 to 97).

> In view of this action, the Department requests that American nationals who may have claims arising out of the nationalization and other seizure of property by the Hungarian Government inform the Department of the details of the losses incurred unless this information has already been placed on record with the Department."

A State Department *request* that American nationals inform it of *the details* of the losses they incurred amounts to a reasonable prospect of recovery for those who suffered such losses.

The Court below and the Tax Court clearly erred in not finding that all of these do give a more-than-reasonable prospect of recovery.

The Court of Appeals erred in assuming the existence of a nonexistent fact as the basis of its decision when it stated that

> **"In 1955 the United States entered into an agreement for compensation of nationalized property with the Provisional Government of Hungary." (Last paragraph of the opinion of the Court of Appeals.)**

The United States never entered into such an agreement with Hungary. This is evident from Section 302 of the International Claims Settlement Act of 1949, as amended:

> "The Secretary of the Treasury shall cover into each of the Hungarian, Rumanian, and Bulgarian Claims Funds, the funds attributable to the respective country or its nationals covered into the Treasury pursuant to subsections (a) and (b) of section 202 of this Act."
>
> "SEC. 202. (a) In accordance with * * * article 29 of the treaty of peace with Hungary, * * * any property which was blocked in accordance with Executive Order 8389 of April 10, 1940, as amended, * * * shall be sold or otherwise liquidated as expeditiously as possible * * *. The net proceeds remaining

upon completion of the administration and liquidation thereof, * * * shall be covered into the Treasury."

"SEC. 202. (b) The net proceeds of any property which was vested in the Alien Property Custodian or the Attorney General after December 17, 1941, pursuant to the Trading With the Enemy Act, as amended, and which at the date of vesting was owned directly or indirectly by Bulgaria, Hungaria, or Rumania, or any national thereof, shall after completion of the administration, liquidation, and disposition of such property * * *, be covered into the Treasury * * *."

The opinion of the Court below then continues:

"Under this agreement, the International Claims Settlement Act of 1949 as amended, 22 U.S.C. Section 1621 *et seq.* (Supplement 1964), Paul Schweitzer filed a claim." (Appendix B, 2b).

"This agreement" obviously means the nonexistent agreement with Hungary, because the International Claims Settlement Act of 1949 as amended does not contain any agreement with Hungary.

This explains the whole basic error: The Court below meant that Paul Schweitzer could not have any claim before 1955, when the supposed agreement was concluded.

The awards upon Yugoslav, Italian, and Soviet claims were based on agreements for compensation of nationalized property, and it is obvious that the Court below thought the same to be the situation with Hungary.

As the International Claims Settlement Act of 1949 as amended is based on the Peace Treaty with Hungary, which came into force on September 15, 1947, i.e., before the nationalizations, by the very argument of the Court below its opinion is erroneous.

May petitioners refer to *Alvary* v. *United States*, 302 F(2d) 790:

> "On fact questions the court should not use the doctrine of judicial notice to go outside the record unless the facts are matters of common knowledge or are capable of certain verification. See, e.g., *Brown* v. *Piper*, 91 U.S. 37, 42 (1875); *McCormick on Evidence*, chapter 37 (1954)."

The Court of Appeals erred in adopting the findings of the Tax Court patterned from *Elek*, 30 T.C. 731, that

> **"[t]he attitude of the present Hungarian Government toward its own nationals offers little reason to hope that compensation will be forthcoming from it * * *."**

The Court below accepted as "sufficient evidence" the following syllogism of the Tax Court (last paragraph on page 9 of the opinion of the Tax Court, R. 55):

> both Elek's and Schweitzer's property were nationalized by the Hungarian Government under the same decree, No. 4/1952,
>
> therefore there can be no doubt that Schweitzer's case is to be decided as the *Elek* case had been.

Peter S. Elek was a Hungarian national on the date of nationalization.[9]

The facts are true, but the syllogism is erroneous, because section 303 of the International Claims Settlment Act allows claims only of nationals of the United States. Paul H. Schweitzer became a naturalized American citizen on August 31, 1925 (second paragraph, page 3 of the opinion of the Tax Court, R. 49), thus he had a claim and a reasonable prospect of recovery unlike Elek.

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[9] *Peter S. Elek*, 30 T.C. 731, third paragraph on page 732:
"The petitioner is a resident of New York, New York, and is a citizen of the United States naturalized in 1956. He was a Hungarian national * * *."

The Court of Appeals erred in adopting the findings of the Tax Court patterened from *Elek*, that Paul H. Schweitzer would be an incorrigible optimist, if he believed in a reimbursement of his nationalization losses, citing *United States* v. *S. S. White Dental Mfg. Co.*, 274 U.S. 398 (1927).

The Supreme Court of the United States called that taxpayer "an incorrigible optimist" because

> "[t]he sequestration of *enemy property* was *within the rights* of the German Government as a *belligerent power* and when effected, left the [taxpayer] *without right* to demand its release or compensation for its seizure, *at least until the declaration of peace.* What would ultimately come back to it, as the event proved, might be secured *not as a matter of right,* but as a matter either of grace to the vanquished, or exaction by the victor." (Emphasis added).

Both the incorrigibility and the optimism, however, vanished when the Treaty of Peace with Hungary was concluded on September 15, 1947, that is *before the nationalizations*:

petitioner's property was *no more* enemy property;

its sequestration was *no more* within the rights of Hungary;

because Hungary was *no more* a belligerent power;

accordingly the sequestration, when effected, left petitioner *no more* without right to demand its release; or *compensation* for its seizure;

furthermore, what would ultimately come back to petitioner, might be secured as a *matter of right,* and

not as a matter of grace to the vanquished,

nor as an exaction by the victor.

Thus the theory of the "incorrigible optimist" sustains our case, not that of the respondent, and *United States* v. *S.S. White Dental Manufacturing Co., supra,* is fully in point with our case, when it affirmatively states, that peti-

tioner *had a claim* of right, by the fact of, and the very time of the seizures, when it says:

> "* * * left the [taxpayer] without right to demand its release or compensation for its seizure, at least *until the declaration of peace.*" (Emphasis added).

The Court of Appeals improperly and mechanically applied a rule designed for questions of evidentiary facts [10] to inferences and to legal questions.

The basis and essence of the opinion of the Tax Court is expressed on the last page of its opinion as follows:

> "It seems to us that the above stipulated facts showing that petitioner did file a claim with the Foreign Claims Settlement Commission under the amended Act of August 9, 1955, for recovery of his *war* losses *which* were *incurred in 1949 and 1952* and was awarded and paid $1,069.42 *has nothing to do with the issue* which we have here to decide—it is irrelevant to the determination *when the losses were incurred.*" (Emphasis added).

There is no error in the statement of the evidentiary fact that petitioner did file a claim with the Foreign Claims Settlement Commission under the amended Act of August 9, 1955, but the remainder of the sentence is clearly and entirely erroneous. *War* losses were not incurred in 1949 and 1952, because there was no war with Hungary in the said years. Accordingly petitioner did not file and could not file for recovery of his "war losses" he incurred in 1949 and 1952.

The Court below nevertheless stated that

> "The Tax Court, however, on sufficient evidence, found as fact that prior to 1959 the petitioners had no reasonable prospect of recovery for these losses at some future date."

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[10] Rule 52(a) of the Federal Rules of Civil Procedure; Section 7482(a) of the Internal Revenue Code of 1954.

That petitioner's filing of a claim and being awarded and paid a reimbursement for his losses incurred in 1949 and 1952 "has nothing to do with the issue" is no finding of fact, but an entirely erroneous conclusory opinion.[11]

The filing of the claim, the award and its payment related to losses incurred in 1949 and 1952, consequently they had to do only and solely with the issue as to when the losses resulted. Section 1.165-1(d)(2)(i) of the Regulations under the Internal Revenue Code differentiate between the occurrence of an event and a later resulting loss, and it is all too obvious, that they are interrelated and relevant to each other, and determinative of when the losses resulted.

Petitioners requested the Court below to review this flagrant error—but in vain.

Finally the Court of Appeals erred by not drawing the proper conclusion from the rather off-handed admission [12] by the respondent that

> **"The Committee Report [13] does state that it remained to await the report and recommendations of the War Claims Commission regarding nationalizations claims against countries such as Hungary * * * ".**

---

[11] The Appellate Courts are limited to a determination of whether the Tax Court's factual inferences and conclusions have any substantial basis in the evidence. (*Helvering* v. *National Grocery Co.*, 304 U.S. 282, 294; *Wilmington Trust Co.* v. *Helvering*, 316 U.S. 164, 168; *Commissioner* v. *Heininger*, 320 U.S. 467, 475; *Dobson* v. *Commissioner*, 320 U.S. 489).

[12] Admissions may also be made in briefs filed, *Joseph C. Stehlin*, T.C. Memo. Op., Dkt. 36436 (1954); *Century Circuit, Inc. of Delaware*, 31 B.T.A. 764; *Peaslee-Gaulbert Co.*, 14 B.T.A. 769; *Murchison Nat. Bank*, 1 B.T.A. 617.

[13] Meaning the second paragraph on page 12 of Senate Report No. 800, 81st Congress, 1st Session, dated July 28, 1949 (R. 44).

The same Senate Report in the same paragraph also says:

> "[n]ationalization measures have occurred in the postwar period in such former enemy countries as Rumania, Hungary, and Bulgaria on a scale no less thorough than in Yugoslavia, Czechoslovakia, and Poland."

The implication of the quoted language in the Senate Report is that it is recognized that confiscations of property of United States citizens occurred in Rumania, Hungary, and Bulgaria which would be dealt with either by amendment to the War Claims Act or by other legislation, depending on the report and recommendation of the Commission.

This is not a hope but it is a *promise by the Senate in its Report of July 28, 1949.*[13]

This promise was fulfilled as to $27 million for Bulgaria, Hungary and Rumania in vested and blocked assets.

It is respectfully submitted that this is nothing less than a reasonable prospect of recovery with respect to the claim for reimbursement of petitioner's losses. Not to recognize this: was clearly erroneous by the Tax Court; and not to remedy this error, was error compounded by the Court below.

CONCLUSION

For all the foregoing reasons, a writ of certiorari to the United States Court of Appeals for the Third Circuit should be granted.

Respectfully submitted,

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APPENDIX A

Statutes Involved

The relevant provisions of the Internal Revenue Code of 1954 and the Regulations thereunder are as follows:

INTERNAL REVENUE CODE OF 1954.

SEC. 165. LOSSES.

[Sec. 165(a)]

"(a) GENERAL RULE.—There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise."

REGULATIONS UNDER THE INTERNAL REVENUE CODE OF 1954

Sec. 1.165-1(d)(2)(i):

"If a casualty or other event occurs which may result in a loss and, in the year of such casualty or event, there exists a claim for reimbursement with respect to which there is a reasonable prospect of recovery, no portion of the loss with respect to which reimbursement may be received is sustained, for purposes of section 165, until it can be ascertained with reasonable certainty whether or not such reimbursement will be received. Whether a reasonable prospect of recovery exists with respect to a claim for reimbursement of a loss is a question of fact to be determined upon an examination of all facts and circumstances. Whether or not such reimbursement will be received may be ascertained with reasonable certainty, for example, by a settlement of the claim, by an adjudication of the claim, or by an abandonment of the claim. When a taxpayer claims that the taxable year in which a loss is sustained is fixed by his abandonment of the claim for reimbursement, he must be able to produce objective evidence of his having abandoned the claim, such as the execution of a release."

Statutes Involved

Sec. 1.165-1(d)(4):

"The rules of this paragraph are applicable with respect to a casualty or other event which may result in a loss and which occurs after January 16, 1960. If the casualty or other event occurs on or before such date, a taxpayer may treat any loss resulting therefrom in accordance with the rules then applicable, or, if he so desires, in accordance with the provisions of this paragraph; but no provision of this paragraph shall be construed to permit a deduction of the same loss or any part thereof in more than one taxable year or to extend the period of limitations within which a claim for credit or refund may be filed under section 6511."

CHAPTER 645—PUBLIC LAW 285

An Act to amend the International Claims Settlement Act of 1949, as amended, and for other purposes. (Approved August 9, 1955.)

"SEC. 202. (a)

In accordance with article 25 of the treaty of peace with Bulgaria, article 29 of the treaty of peace with Hungary, and article 27 of the treaty of peace with Rumania, any property which was blocked in accordance with Executive Order 8389 of April 10, 1940, as amended, and remains blocked on the effective date of this title, and which, as of September 15, 1947, was owned directly or indirectly by Bulgaria, Hungary, and Rumania or by any national thereof as defined in such Executive order, shall vest in such officer or agency as the President may from time to time designate and shall vest when, as, and upon such terms as the President or his designee shall direct. Such property shall be sold or otherwise liquidated as expeditiously as possible after vesting under such rules

and regulations as the President or his designee may prescribe. The net proceeds remaining upon completion of the administration and liquidation thereof, including the adjudication of any suits or claims with respect thereto under sections 207 and 208, shall be covered into the Treasury. Notwithstanding the preceding provisions of this subsection, any such property determined by the President or his designee to be owned directly by a natural person shall not be vested under this subsection but shall remain blocked subject to release when, as, and upon such terms as the President or his designee may prescribe. If, at any time within one year from the date of the vesting of any property under this subsection, the President or his designee shall determine that it was directly owned at the date of vesting by a natural person, then the President or his designee shall divest such property and restore it to its blocked status prior to vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe, or if such property has been liquidated, shall divest the net proceeds thereof and carry them in blocked accounts with the Treasury, bearing no interest, in the name of the owner thereof at the date of vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe."

"(b) The net proceeds of any property which was vested in the Alien Property Custodian or the Attorney General after December 17, 1941, pursuant to the Trading With the Enemy Act, as amended, and which at the date of vesting was owned directly or indirectly by Bulgaria, Hungary, or Rumania, or any national thereof, shall after completion of the administration, liquidation, and disposition of such property pursuant to such Act, including the adjudication of any suits or claims with respect thereto under such Act, be covered into the Treasury, except that the net proceeds of any such property which the

President or his designee shall determine was directly owned by a natural person at the date of vesting shall be divested by the President or such officer or agency as he may designate and carried in blocked accounts with the Treasury, bearing no interest, in the name of the owner thereof at the date of vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe."

"(c) The determination under this section that any vested property was not directly owned by a natural person at the date of vesting shall be within the sole discretion of the President or his designee and shall not be subject to review by any court."

"(d) The President or his designee may require any person to furnish, in the form of reports or otherwise, complete information, including information with regard to past transactions, relative to any property blocked under Executive Order 8389 of April 10, 1940, as amended, or as may be otherwise necessary to enforce the provisions of this section; and the President or his designee may require of any person the production of any books of account, records, contracts, letters, memoranda, or other papers relative to such property or as may be otherwise necessary to enforce the provisions of this section."

"SEC. 302.

There are hereby created in the Treasury of the United States five funds to be known as the Bulgarian Claims Fund, the Hungarian Claims Fund, the Rumanian Claims Fund, the Italian Claims Fund, and the Soviet Claims Fund. The Secretary of the Treasury shall cover into each of the Hungarian, Rumanian, and Bulgarian Claims Funds, the funds attributable to the respective country or its nationals covered into the Treasury pursuant to subsections (a) and (b) of section 202 of this Act. The

Secretary of the Treasury shall cover into the Italian Claims Fund the sum of $5,000,000 paid to the United States by the Government of Italy pursuant to article II of the Memorandum of Understanding. The Secretary shall cover into the Treasury the funds collected by the United States pursuant to the Litvinov Assignment (including postal funds due prior to November 16, 1933, to the Union of Soviet Socialist Republics because of money orders certified to that country for payment) and shall cover into the Soviet Claims Fund the funds so covered into the Treasury. The Secretary shall deduct from each claims fund 5 per centum thereof as reimbursement to the Government of the United States for the expenses incurred by the Commission and by the Treasury Department in the administration of this title. Such deduction shall be made before any payment is made out of such fund under section 310. All amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts."

"SEC. 303.

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims of nationals of the United States against the Governments of Bulgaria, Hungary, and Rumania, or any of them, arising out of the failure to—

'(1) restore or pay compensation for property of nationals of the United States as required by article 23 of the treaty of peace with Bulgaria, articles 26 and 27 of the treaty of peace with Hungary, and articles 24 and 25 of the treaty of peace with Rumania. Awards under this paragraph shall be in amounts not to exceed two-thirds of the loss or damage actually sustained;

'(2) pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to the effective date of this title, of property of nationals of the United States in Bulgaria, Hungary, and Rumania; and

'(3) meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to April 24, 1941, in the case of Bulgaria, and prior to September 1, 1939, in the case of Hungary and Rumania, and which became payable prior to September 15, 1947.' ''

APPENDIX B

Opinion of the Court

(Filed April 14, 1967)

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 15937

PAUL H. SCHWEITZER AND FRIEDEL SCHWEITZER,
Petitioners,

VS.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON PETITION TO REVIEW THE DECISION OF THE TAX COURT OF THE UNITED STATES.

Argued February 9, 1967

Before BIGGS, HASTIE AND FORMAN, *Circuit Judges.*

PER CURIAM:

In 1959 Paul and Friedel Schweitzer claimed a deduction for a loss on their joint income tax return under Section 165(a) of the Internal Revenue Code of 1954. The Commissioner disallowed the deduction and asserted a deficiency and the Tax Court upheld his decision.

The loss claimed by the Schweitzers was due to losses sustained on property owned by Paul Schweitzer which was confiscated in 1949 and 1952 pursuant to decrees of the Praesidium of the Hungarian People's Republic.

Opinion of the Court

The question presented is whether the Schweitzers did not sustain their losses until 1959 when the deduction was claimed, although the properties were confiscated in 1949 and 1952. In 1955 the United States entered into an agreement for compensation of nationalized property with the Provisional Government of Hungary. Under this agreement, the International Claims Settlement Act of 1949 as amended, 22 U.S.C. Section 1621 *et seq.* (Supplement 1964), Paul Schweitzer filed a claim. The Foreign Claims Settlement Commission proposed a settlement of Schweitzer's claim which resulted in payments to him of $1,069.42 in 1959. The petitioners claim that not until this settlement by the Foreign Claims Settlement Commission did they have no reasonable prospect of recovery for the losses sustained on the confiscated property. The Tax Court, however, on sufficient evidence, found as fact that prior to 1959 the petitioners had no reasonable prospect of recovery for these losses at some future date. This finding makes Section 1.165-1(d) of the regulations under the Internal Revenue Code of 1954 inapplicable.

The decision of the Tax Court will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

Judgment

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 15,937

PAUL H. SCHWEITZER AND FRIEDEL SCHWEITZER,
Petitioners,

VS.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

(T. C. Docket No. 4705-63)

ON PETITION TO REVIEW A DECISION OF THE TAX COURT OF THE UNITED STATES.

Present:

BIGGS, HASTIE and FORMAN, *Circuit Judges.*

This cause came on to be heard on the record from the Tax Court of the United States, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decision of the said Tax Court in this cause be, and the same is hereby affirmed.

Attest:

THOMAS F. QUINN,
Clerk.

April 14, 1967.

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 585

PAUL H. SCHWEITZER AND FRIEDEL SCHWEITZER, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

In 1949 and 1952 the Hungarian Peoples Republic confiscated without compensation various properties that petitioner,[1] a United States citizen, owned in Hungary. Petitioner did not claim deductions on account of these confiscations on his income tax re-

[1] Friedel Schweitzer is a party only because a joint income tax return was filed for the year in issue. Paul H. Schweitzer will be referred to as petitioner.

turns for 1949 and 1952, but did seek the deductions with respect to his 1959 tax liabilities (R. 37a). The question here is whether the Tax Court correctly found as a fact that petitioner, in 1949 and 1952, had no reasonable prospect of recouping his losses, and therefore could not postpone the deduction.

The controlling legal principles are clear and have been correctly applied to the facts of this case. There is no conflict or any other basis for review by this Court.

Under settled principles, a loss such as petitioner's must be claimed, for tax purposes, in the year when it occurs. Sec. 23(e), Internal Revenue Code of 1939; Sec. 165, Internal Revenue Code of 1954; *Boehm* v. *Commissioner*, 326 U.S. 287; *United States* v. *White Dental Co.*, 274 U.S. 398; *Elek* v. *Commissioner*, 30 T.C. 731. To defer a loss, the taxpayer must have, in the year the loss is sustained, a claim for reimbursement with a reasonable prospect of recovery. *Curtis* v. *Commissioner*, 183 F. 2d 7 (C.A. 7), affirming 12 T.C. 810; *Scofield's Estate* v. *Commissioner*, 266 F. 2d 154 (C.A. 6). See, also, Treas. Reg. Section 1.165-1(d)(2)(i), 26 C.F.R.[2]

In support of his claimed loss deduction for 1959 petitioner asserts that in 1949 and 1952 he had a rea-

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[2] In a case such as this the statutory scheme provides that the taxpayer is to take a deduction in the year of loss and is to report as income any subsequent reimbursement, whenever and to whatever extent received. Sections 1.165-1(d)(1), (d)(2)(iii) of the Regulations; see *Petschek* v. *United States*, 335 F. 2d 734, 736-737 (C.A. 2); *Spitzer* v. *Commissioner*, decided August 28, 1959 (18 T.C.M. 743); cf. *Freihofer Baking Co.* v. *Commissioner*, 151 F. 2d 383 (C.A. 3).

sonable prospect of recovery and that this prospect was not foreclosed until 1959 when he received a nominal amount from the Foreign Claims Settlement Commission based upon a claim filed with it in 1957. But that claim was pursuant to a provision—Section 303—of the International Claims Settlement Act of 1949 that was not enacted until 1955. See Section 3 of the Act of August 9, 1955, c. 645, 69 Stat. 571, 22 U.S.C. 1641b. On this record the Tax Court was correct in finding that the evidence did not support petitioner's contention.

The petition for certiorari should be denied.

Respectfully submitted.

RALPH S. SPRITZER,
Acting Solicitor General.

MITCHELL ROGOVIN,
Assistant Attorney General.

HAROLD C. WILKENFELD,
JEANINE JACOBS,
Attorneys.

OCTOBER, 1967.

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